

## 1. DEFINITIONS AND GENERAL

The definitions and rules of interpretation in this Condition apply in these terms and conditions ("Conditions").

- 1.1 "Forest Rock" means **Forest Rock Systems Ltd**
- 1.2 "Client" means any person, partnership or company whose request for the provision of Services is accepted by Forest Rock.
- 1.3 "Client Data" means all data supplied by the Client or which is generated by Forest Rock in the performance of the Services and which relates exclusively to the Client.
- 1.4 "Contract" means the Client's purchase order and Forest Rock's acceptance of it, or the Client's acceptance of a quotation for Services by Forest Rock under Condition 2.1 together with these Conditions.
- 1.5 "Deliverables" means all documents, products and materials (excluding drafts) produced by Forest Rock for the Client as part of the Services in any form, including the deliverables specified in the Contract.
- 1.6 "In-put Items" means all documents, information and materials provided by the Client relating to the Services including (without limitation) the in-put items specified in the Contract.
- 1.7 "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.8 "Services" means the services to be provided by Forest Rock under the Contract as set out in the Contract, together with any other services which Forest Rock agrees in writing to provide to the Client.
- 1.9 These Conditions shall apply to all Services provided by Forest Rock to a Client unless otherwise agreed in writing. These Conditions shall take effect to the exclusion of any other terms and conditions of the Client or otherwise. No prior correspondence, addition to, variation or waiver of these Conditions shall be binding unless agreed in writing by Forest Rock.
- 1.10 The headings in these Conditions shall not affect their construction or interpretation.

## 2 PROVISION OF SERVICES

- 2.1 The Client's purchase order, or the Client's acceptance of a quotation for Services by Forest Rock, constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by Forest Rock other than: (i) by a written acknowledgement issued and executed by Forest Rock; or (ii) (if earlier) by Forest Rock starting to provide the Services, when a contract for the supply and purchase of the Services on these Conditions will be established. The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the Contract.
- 2.2 Quotations are given by Forest Rock on the basis that no Contract shall come into existence except in accordance with Condition 2.1. Any quotation is valid for a period of 90 days from its date, provided that Forest Rock has not previously withdrawn it.
- 2.3 Forest Rock shall provide the Services in accordance with the written instructions specified in the Contract or otherwise agreed in writing between the parties.
- 2.4 Where a member of Forest Rock staff is named as the person to provide the Services Forest Rock shall be entitled, on giving reasonable notice, to use other staff of comparable skill and experience to supply the Services.
- 2.5 Unless otherwise agreed in writing Forest Rock may correspond by the Internet or other electronic media. In such cases Forest Rock will take reasonable steps to safeguard the security of the information transmitted, but will not accept liability for its security and confidentiality beyond these steps.

## 3 THE CLIENT'S OBLIGATIONS

- 3.1 The Client warrants that all information provided by or for it to Forest Rock will be full and accurate.
- 3.2 The Client will be responsible for assessing the recommendations and advice given by Forest Rock and for any commercial decisions that it makes. The Client is responsible for taking into account the limitations in the instructions given to Forest Rock, and commercial and other factors, of which the Client and its other advisors are, or should be aware.
  - 3.3 The Client shall: (i) co-operate with Forest Rock in all matters relating to the Services; (ii) provide Forest Rock, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Client's premises, office accommodation, data and other facilities as reasonably required Forest Rock; (ii) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises; and (iii) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start.
- 3.4 The Client will ensure that all legislative health and safety requirements are complied with in relation to employees, agents and contractors of Forest Rock working on the Client's premises.
- 3.5 The Client will ensure that its employees attending Forest Rock premises will comply with statutory and Forest Rock health, safety, welfare, information technology and security arrangements.
- 3.6 The Client shall provide to Forest Rock, in a timely manner, such In-put Items and other information as Forest Rock may require and ensure that it is accurate in all material respects. Delivery, maintenance and insurance of In-put Items shall be the responsibility of the Client. The Client shall ensure that all In-put Items provided by the Client are in good working order and suitable for the purposes for which they are used in relation to the Services and conform to all relevant United Kingdom standards or requirements. The Client shall provide, in a timely manner, such other information and equipment as Forest Rock may reasonably require.
- 3.7 The Client shall indemnify Forest Rock against claims brought or threatened and shall be liable to pay Forest Rock, on demand all reasonable costs, charges or losses sustained or incurred by Forest Rock (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract.

#### **4 PAYMENT TERMS**

- 4.1 The fees payable in consideration of the provision of the Services and the Deliverables shall be as specified in the Contract. All sums payable under these Conditions shall be invoiced as set out in the Contract. Unless otherwise agreed in writing all sums due to Forest Rock are due within 30 days of invoice date. Forest Rock reserves the right unilaterally to vary payment terms by giving prior written notice to the Client.
- 4.2 If any payment is not made to Forest Rock by the due date: (i) Forest Rock reserves the right to cease to provide the Services and, if it thinks fit, terminate the contract; (ii) the Client agrees that payment for all Services carried out by Forest Rock up to that date shall become due and payable forthwith whether or not an invoice has been issued in respect of that work and notwithstanding that 30 days may not have expired since the invoice date; and (iii) Forest Rock reserves the right to charge interest on any overdue payment at the rate of 3% above the base rate of Forest Rock's bankers in force from time to time.
- 4.3 The Client shall reimburse Forest Rock for all expenses properly incurred by Forest Rock in the discharge of the Services.
- 4.4 Forest Rock will add VAT to its charges and expenses at the applicable rate then in force.
- 4.5 Forest Rock reserves the right to take up credit, bank and other references.
- 4.6 Time for payment shall be of the essence of the Contract.

#### **5 FOREST ROCK'S WARRANTIES AND LIABILITY**

- 5.1 Forest Rock will use reasonable skill and care in carrying out the Services.
- 5.2 Any advice given by Forest Rock is based upon the business climate and circumstances prevailing at the time the advice is given. Forest Rock accepts no responsibility for any external factors which may later change or fluctuate or of which Forest Rock cannot reasonably be expected to be aware.
- 5.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.4 The parties agree that Forest Rock's advice will only apply in the context of the instructions given by the Client to Forest Rock. Forest Rock will not accept liability for use by the Client in any other circumstances.
- 5.5 Any advice or recommendations given by Forest Rock as part of the Services will not be binding on Forest Rock unless confirmed by Forest Rock in writing.
- 5.6 Any work carried out for the Client by Forest Rock outside the Services and for which Forest Rock does not charge the Client, shall be carried out on an "as-is" basis without any conditions, warranties or other guarantees of any kind. Forest Rock will not expect or agree to the Client relying upon such work and Forest Rock excludes all liability in contract and in tort, including for negligence, for such work.
- 5.7 Forest Rock will not be liable for any of the following arising from provision of the Services (including arising from Forest Rock's negligence): (i) loss of anticipated profits, savings or expected future business; (ii) damage to reputation or goodwill; (iii) damages, costs or expenses payable by the Client to any third party; (iv) loss of any goods, order or contract; (v) loss of use; (vi) loss or corruption of data or information; or (v) indirect or consequential loss of any kind.
- 5.8 Forest Rock will not be liable for (i) any failure or delay in carrying out the Services attributable to any act or omission, or delay by the Client, its agents, consultants, employees or contractors; or (ii) any products supplied by a third party.
- 5.9 Forest Rock shall use reasonable endeavours to provide the Services, deliver the Deliverables in accordance in all material respects specified in the Contract and to meet any performance dates agreed in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 5.10 The Client shall bring any claim related to the Services within two years of (i) the relevant incident; or (ii) the date when the Client ought reasonably to have been aware of the existence of the claim. Forest Rock excludes liability for claims brought outside this time limit.
- 5.11 The total liability of Forest Rock in contract, tort (including negligence, breach of statutory duty), misrepresentation, restitution or otherwise relating to the Services shall be limited to the reasonable cost of remedying any defect in the Services or other matter constituting a breach and in no circumstances shall the liability of Forest Rock exceed one-and-one-half times the total paid by the Client to Forest Rock for the Services.
- 5.12 Nothing in this Condition 5 shall limit the liability of Forest Rock for death or personal injury caused by its negligence or for any other liability which may not be excluded by law.
- 5.13 Back end drivers and implementation logic written by Forest Rock will be covered by a 6 month software warranty in place to facilitate bug fixes only. The warranty period commences from the date of issue of the final project invoice.
- 5.14 Hardware products sold by Forest Rock will be covered by a 24 Month Warranty from date of product delivery

#### **6 TERMINATION**

- 6.1 Without prejudice to their other rights and subject to as otherwise agreed in the Contract, a party may terminate a Contract if (i) the other party commits a material irremediable breach or fails to remedy a material and remediable breach within 21 days of receipt of written notice to do so; (ii) the other party has an administrator or administrative receiver appointed over all or any of its assets or goes into insolvent liquidation; or (iii) an event within the scope of Condition 9.2 prevents or delays Forest Rock from carrying out the Services for 60 consecutive days or more.
- 6.2 Payment for all Services carried out up to and including the date of termination shall be due on termination by the Client pursuant to Condition 6.1.
- 6.3 Payment due on termination by Forest Rock pursuant to Condition 6.2 shall include: (i) payment for all Services carried out up to and including the date of termination; and (ii) reimbursement to Forest Rock of the cost of any commitments entered into by Forest Rock on the assumption that it would supply all the Services.
- 6.4 On termination of the Contract for any reason, the Client shall, within a reasonable time, return all of Forest Rock's equipment, materials and confidential information. If the Client fails to do so, then Forest Rock may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping.

#### **7 CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

- 7.1 Subject to the following and to Condition 2.3, Forest Rock will treat as confidential the Client Data together with all trade secrets and confidential information received from the Client relating to the Services concerning the Client or its business. Forest Rock will not disclose such information to a third party without the prior written consent of the Client. Forest Rock may use information obtained while providing the Services for the compilation of statistics. For the avoidance of doubt, Forest Rock shall be entitled to use all Intellectual Property Rights and all other rights created in the performance of the Services which do not constitute Client Data.
- 7.2 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Forest Rock, its employees, agents, consultants or subcontractors and any other confidential information concerning Forest Rock's business or its services which the Client may obtain.
- 7.3 Neither party shall be prevented from disclosing information which: (i) is or becomes public knowledge; (ii) is or becomes known from other sources without

- restriction on disclosure; (iii) is required to be disclosed by law; or (iv) the recipient party can prove is or has been independently developed by the recipient.
- 7.4 The Client will neither display nor use either the name "Forest Rock" or the Forest Rock logo nor will the Client disclose to any third party Forest Rock's involvement in the Services without the prior written consent of Forest Rock, unless legally required to do so.
- 7.5 As between the Client and Forest Rock, all Intellectual Property Rights created in the performance of the Services shall be owned by Forest Rock EXCEPT THAT, subject to Conditions 7.6 and 7.7, Forest Rock assigns to the Client, to the extent that it is able, all Intellectual Property Rights in the Deliverables.
- 7.6 The client irrevocably licenses all Intellectual Property Rights in the Deliverables to Forest Rock free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable Forest Rock to make reasonable use of the Deliverables which do not constitute Client Data for its own internal purposes and for the compilation of statistics for dissemination to Forest Rock's existing and potential clients, intermediaries and other third parties.
- 7.7 The Client acknowledges that, where Forest Rock does not own any In-put Items, the Client's use of rights in In-put Items is conditional on Forest Rock obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Forest Rock to license such rights to the Client.
- 7.8 Subject to Condition 7.8, each party ("the Indemnifying Party") shall, at its own expense, defend or at its option settle any action brought against the other ("Indemnified Party") which consists of a claim that the use of any materials supplied by the Indemnifying Party for any activity contemplated under this agreement infringes any Intellectual Property Right belonging to a third party, and the Indemnifying Party agrees to be responsible for all and indemnify the Indemnified Party against all losses, costs (including reasonable legal costs), damages, liabilities, claims and expenses suffered or incurred by the Indemnifying Party in connection with any such claim.
- 7.9 The Indemnifying Party's obligations under Condition 7.8 shall be conditional on the Indemnified Party: (a) promptly notifying the Indemnifying Party of such claim; (b) giving the Indemnifying Party express authority to proceed as contemplated by this Condition 7.8; and (c) providing the Indemnifying Party with all such available information and assistance as it may reasonably require.

## **8 FOREST ROCK STAFF**

- 8.1 The Client shall not during the provision of the Services or within 6 months after the completion of such without Forest Rock's prior written consent solicit or entice away from Forest Rock or offer employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of Forest Rock (of the level of consultant or higher) who has carried out work in connection with the Services or engage any such person either directly or indirectly to provide services to the Client.
- 8.2 Any consent given by Forest Rock pursuant to Condition 8.1 is subject to, or if the Client is in breach of Condition 8.1 the Client agrees to, pay to Forest Rock, on demand, a sum equal to 100% of the total annual remuneration package paid by Forest Rock to the member of its staff concerned prior to his/her departure. The Client acknowledges that this sum represents a genuine and fair assessment of the likely loss to Forest Rock.

## **9 MISCELLANEOUS**

- 9.1 If two or more parties engage Forest Rock to supply Services in respect of a particular contract then such parties shall be jointly and severally liable for payment for the Services.
- 9.2 Forest Rock will not be liable for any failure or delay in carrying out the Services due to any circumstances beyond its reasonable control.
- 9.3 Any notice by either party shall be deemed to have been properly given if delivered by hand, or sent by first class recorded delivery post to the other party at its address notified in writing, and shall be deemed to have been delivered two working days after the date of posting. For the avoidance of doubt, notices may not be served by email.
- 9.4 Any Condition found to be invalid or unenforceable shall be severed, and the remaining Conditions shall continue to be valid and enforceable as if the contract had been agreed without the invalid or unenforceable Condition.
- 9.5 The Contract to which these Conditions apply shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 9.6 Conditions 7 and 8 shall remain enforceable irrespective of termination of the contract or completion of the Services for whatever reason. Termination or completion shall not prejudice the accrued rights or liabilities of either party.
- 9.7 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 9.8 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as provided in the Contract. Nothing in this Condition shall limit or exclude any liability for fraud.
- 9.9 The Client shall not, without the prior written consent of Forest Rock, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract. Forest Rock may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 9.10 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute the appointment of any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 9.11 A person who is not a party to the Contract shall not have any rights under or in connection with it.